IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

WA.No. 2426 of 2007

AGAINST THE JUDGEMENT IN WPC.36021/2004 DATED 06/11/2006
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APPELLANT/ PETITIONER:

T.S.VASUDEVAN,
AGED 59 YEARS
S/O.SUBRAMANIAN,
THAIPARAMBATH HOUSE,
KODUNGALLUR.

BY ADV. SRI.V.M.KRISHNAKUMAR

RESPONDENTS/RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY SECRETARY,
DEPARTMENT OF EXCISE,
SECRETARIAT,THIRUVANANTHAPURAM.

2. THE ASSISTANT EXCISE COMMISSIONER
PALAKKAD.

3. THE DEPUTY TAHSILDAR (RR)
KODUNGALLUR.

4. THE EXCISE COMMISSIONER,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SHRI M.P. SREEKRISHNAN.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 30/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, CJ. & K. M. JOSEPH, J.

W. A. NO. 2426 OF 2007

Dated this the 30th November, 2007

JUDGMENT

H.L. DATTU, CJ.

Questioning the correctness or otherwise of the order passed by the learned Single Judge in W.P.(C) No.36021/04 dated 6.11.2006, the petitioner is before us in this Writ Appeal.

2. In the Writ Petition filed, the petitioner had called in question Exts.P1 and P3 notices issued by respondents 2 and 3 respectively, to recover a sum of Rs.4,27,355/=.

3. The learned Single Judge by Order dated 6.11.2006 has rejected the Writ Petition.

4. The matter is now posted for Admission before us. By consent of both the learned counsel appearing for the parties, the matter is taken up for final hearing.

5. After arguing the matter for some time, learned counsel for the appellant brings to our notice the Affidavit filed by the appellant before this court dated 28.11.2007, wherein the appellant has undertaken that he shall pay the quantified tax liability in eight instalments. The Affidavit filed by the appellant reads as under:

> *"I, T.S. Vasudevan, S/o. Subramanian, aged 59 years, Thaiparambath House, Kodungallur, do hereby solemnly affirm and state as follows:*
>
> *1. I am the appellant in the above Writ Appeal and I know the facts of the case.*
>
> *2. The above Writ Appeal is filed challenging the Judgment of the learned Single Judge in W.P.(C). No.36021/2004. The said W.P.(C). is filed to quash Ext.P1 demand notice issued by the Asst. Excise Commissioner, Palakkad.*

3. By Ext.P1, the Department had sought to recover the interest on the Additional Tax for transportation of toddy alleging that there is a mistake in levying the tax. The learned Single Judge passed the impugned Judgment directing issuance of fresh demand notice deducting Rs.3353/= and recalculating the interest on the balance tax. This Judgment is challenged in the present Writ Appeal.

4. It is submitted that I am not an Abkari business man, but a licensed document writer. I am not in a position to pay the huge amount demanded as per Ext.P1 in lump.

5. I undertake to pay the amount demanded as per Ext.P1 if I am given sufficient time to pay the amount. I am not in a position to raise the entire amount in lump. I undertake that if I am given 8 instalments, I will be able to pay the entire amount demanded as per Ext.P1. Hence it is in the interest of justice that I may be permitted to pay the amount as demanded as per Ext.P1 in 8 instalments.

All the facts stated above are true.

Dated this 28th day of November, 2007."

6. Appellant pleads his financial inability to pay the entire amount. He requests us to grant instalment facility. In our view, in so far as tax liability is concerned, we are not inclined to grant any instalment facility, but in so far as interest for belated payment of tax is concerned, if some instalment facility is granted, in our opinion, it would not cause any prejudice to the respondents.

7. Accordingly, we pass the following:

Order

(1) The Writ Appeal is disposed of.

(2) The Affidavit filed by the appellant is placed on record.

(3) The appellant shall pay a sum of Rs.1,81,853/- which represents the tax for the assessment year in question, within one month from today.

(4) After the appellant deposits the quantified tax liability, the respondents shall re-calculate the interest payable by the appellant and issue a fresh demand notice for payment of interest. After service of such demand notice, the appellant shall pay the quantified interest liability in eight equal monthly instalments.

(5) If, for any reason, the appellant commits any default in payment of the amount as directed by us, the respondents are at liberty to initiate appropriate proceedings to recover the entire amount due from the appellant.

(6) The Appellant shall not seek for extension of time to make payments as directed by us.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE

K.M. JOSEPH,
JUDGE

kbk/DK.